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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 82

ERNESTINE C. SINISCAL AND VERNIE REED, ADMINISTRATRIX OF THE ESTATE OF ELMER A. REED, DECEASED, PETITIONERS

v.

UNITED STATES OF AMERICA, AS TRUSTEE AND GUARDIAN AND EX REL. OF THE ESTATES AND PERSONS OF JASPER GRANT AND HAROLD F. THORNTON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The district court did not write an opinion. Its findings of fact and conclusions of law appear at R. 55-63.[1] The opinion of the court of appeals (R. 1013-1021) is reported at 208 F. 2d 406.

[1] At R. 20-27 are certain facts contained in a Pre-trial Order. When the court made its ultimate findings and conclusions after trial, it expressly found as true all such facts contained in the Pretrial Order except that it made a minor amendment in one of them (R. 55-56).

JURISDICTION

The judgment of the court of appeals was entered on November 14, 1953 (R. 1012). An order amending the opinion and denying a petition for rehearing was entered on December 29, 1953 (R. 1023). By orders of March 25, 1954, and April 20, 1954, the time within which to file a petition for a writ of certiorari was extended to and including May 20, 1954. The petition for a writ of certiorari was filed on May 19, 1954.

QUESTION PRESENTED

Whether a judgment canceling, by reason of fraud and violation of applicable federal statutes, certain instruments purporting to convey to white persons title to property held in trust by the United States for individual Indians is invalid solely because no guardian ad litem was appointed for two of the participating defendants who were of Indian blood.

STATEMENT

This suit was instituted by the United States in the United States District Court for the District of Oregon against petitioners and other defendants, seeking cancellation of certain instruments which purported to vest in defendants Henry B. Taylor and Elizabeth A. Taylor the title to 800 acres of valuable timber land in Curry County, Oregon, held by the United States under trust patents for the benefit of Jasper Grant and

Harold F. Thornton, individual Indians (R. 5-11).

The property involved was at all times here pertinent held by the United States under trust patents issued under the General Allotment Act of February 8, 1887, 24 Stat. 388, in trust for Grant and Thornton, Indian wards of the United States (Fdg. I, R. 55-56, R. 21-22). Lands of that character could be legally sold to white persons only after a publicly advertised sale under competitive bidding (Fdg. IX, R. 58. See 25 C.F.R. 241.25 to 241.29). However, subject to conformance to certain conditions, such lands could be legally transferred to a *bona fide* Indian purchaser without such publicly advertised competitive sale. See 25 C.F.R. 241.11.

The trial court found that as a result of concerted fraudulent action on the part of petitioners and the other defendants a sale to the Taylors, who are non-Indians, was attempted without competitive bidding and at a grossly inadequate price of $135,000.[2] This was accomplished by using petitioner Siniscal, who is part Indian, as a conduit for transfer of the title to the Taylors, for which service she was to receive a fee of $25,000 (Fdgs. V, VII, IX, XI, R. 57-59). Petitioner Siniscal and her father, Elmer Reed, were well aware of the nature and the purpose of the conspiracy, were active participants therein, and to insure its success

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[2] The Taylors gave an option to defendants Brenner and Marsh to purchase the land for $300,000 (R. 23), and the defendants knew that the timber on the land was worth at least $300,000 (R. 29).

made false representations to the government officer (R. 55-63).

The trial court set aside the entire transaction and annulled all instruments connected therewith, including an agreement by the Taylors placing $25,000 in escrow for petitioner Siniscal (R. 66-69). On an appeal taken by petitioners Siniscal and Elmer Reed,[3] the Court of Appeals affirmed the judgment of the trial court in so far as it voided all transactions relating to the transfer of the land,[4] holding that the appeal was without merit since Mrs. Siniscal was not buying the property in her own right but "was acting as the traditional 'man of straw' for the benefit of the Taylors" (R. 1018). The Court of Appeals likewise rejected petitioners' claim that they should have been represented by the United States Attorney or that a guardian ad litem should have been appointed for them, observing that "They were ably represented by counsel" (R. 1020).

ARGUMENT

The only interest which petitioners Siniscal and Vernie Reed (administratrix of the estate of Elmer Reed, deceased) have in this case arises from the inability of Mrs. Siniscal to collect the $25,000 the Taylors were to pay her for acting as

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[3] Petitioners Siniscal and Elmer Reed were the only defendants who participated in the appeal.

[4] On the Government's cross-appeal, the Court of Appeals reversed that part of the trial court's judgment which had required the return to the Taylors of the $135,000 purchase price with interest.

a go-between (Pet. p. 9). In their petition for a writ of certiorari, they do not challenge the findings or holdings of the courts below on the merits of the case. The principal issue they present to this Court is whether the judgment entered in this case is invalid because no guardian ad litem was appointed for defendants Siniscal and Elmer Reed by the trial court, the contention being that such action was necessary in view of their Indian blood.

The contention is plainly without merit. There is nothing to indicate that defendants Siniscal and Elmer Reed were insane or otherwise incompetent. All Indians have been made citizens of the United States and are endowed with the same capacity to sue as other citizens. *Felix* v. *Patrick,* 145 U.S. 317, 332. Although their authority to deal with particular property may be restricted in execution of what has been referred to as a "guardian and ward relationship", their capacity to sue or be sued is not thereby affected. *Lane* v. *Pueblo of Santa Rosa,* 249 U. S. 110, 113; *Heckman* v. *United States,* 224 U. S. 413, 442, 446; Cohen, *Handbook of Federal Indian Law,* p. 167. Hence, there was no need to appoint a guardian ad litem in this case. And even if there were merit to the contention that a guardian ad litem was required merely because the defendants Siniscal and Elmer Reed were part Indian, the failure to appoint such a guardian would not void the judgment, but would simply make it voidable upon a showing that the defendants had a meritorious defense and were not properly represented in the action. *Zaro* v.

Strauss, 167 F. 2d 218, 220 (C.A. 5). Petitioners have made no such showing, and it is beyond question that they had no meritorious defense. It is likewise clear that they were ably represented.

Petitioners also advance the argument (Pet. pp. 7-8, 13-14, 19-20) that Grant and Thornton, the Indians for whom the United States held the property in trust, were competent, and that the United States could not, for that reason, sue to recover title to the property on their behalf. But this Court has already held that the United States may sue to protect the interest of any Indian under guardianship, despite the fact that he has been granted citizenship. *Heckman* v. *United States, supra,* at p. 437.

CONCLUSION

The decision of the court below is clearly correct, and further review is not warranted. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JULY, 1954.

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